

**NOTICE OF PROPOSED ACTION
TO
BUILDING STANDARDS
OF THE
CALIFORNIA BUILDING STANDARDS COMMISSION**

**REGARDING THE 2016 CALIFORNIA GREEN BUILDING STANDARDS CODE,
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11**

BSC 03-16

Notice is hereby given that the California Building Standards Commission (CBSC) proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 11. The CBSC is proposing building standards related to recycled water building standards.

PUBLIC COMMENT PERIOD

(Gov. Code, § 11346.5, subd. (a)(17).)

A public hearing has not been scheduled; however, written comments will be accepted from March 17, 2017, until 5:00 p.m. on May 1, 2017. Please address your comments to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Attention: Mia Marvelli, Executive Director

Written Comments may also be faxed to (916) 263-0959 or E-mailed to CBSC@dgs.ca.gov.

Any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be held.

The public will have an opportunity to provide both written and/or oral comments regarding the proposed action on building standards at a public meeting to be conducted by the California Building Standards Commission to be scheduled at a date near the end of the current adoption cycle. A meeting notice will be issued announcing the date, time and location of the public meeting.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

(Gov. Code, § 11346.5, subd. (a)(18).)

Following the public comment period, CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

(Gov. Code, § 11346.5, subd. (a)(2).)

CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Sections (H&SC) 18928, 18929.1, 18930.5, 18931.7(b), 18934.5, 18940.5, 18940.6, and 18941.8. The purpose of these building standards is to implement, interpret, and make specific the provisions of H&SC Section 18930.5, 18940.6 and 18941.8. The California Building Standards Commission is proposing this regulatory action based on Health and Safety Code Section (H&SC) 18940.6 and 18941.8.

INFORMATIVE DIGEST

(Gov. Code, § 11346.5, subd. (a)(3).)

Summary of Existing Laws

H&SC 18928 states that each state agency adopting or proposing adoption of a model code, national standard, or specification shall reference the most recent edition of applicable model codes, national standards, or specifications.

H&SC 18929.1 states that CBSC shall receive proposed building standards from state agencies for consideration in an 18-month code adoption cycle. The commission shall develop regulations setting forth the procedures for the 18-month adoption cycle.

H&SC 18930.5 grants CBSC the authority, if no state agency has the authority or expertise to propose green building standards applicable to a particular occupancy, to adopt, approve, codify, update, and publish green building standards for those occupancies.

H&SC 18934.5 sets forth that, where no state agency has the authority to adopt building standards applicable to state buildings, the commission shall adopt, approve, codify, and publish building standards providing the minimum standards for the design and construction of state buildings.

H&SC 18931.7(b) states that CBSC can utilize the Building Standards Administration Special Revolving Fund for the updating of verification guidelines for Tier 1 or Tier 2 green building standards.

H&SC 18940.5 requires agencies that propose green building standards for inclusion in Part 11 of Title 24 of the California Code of Regulations shall, to the extent feasible, reference or reprint the green building standards in other relevant portions of Part 2, 2.5, 3, 4, 5, or 6 of Title 24 of the CCR. For purposes of compliance with this section, the republication of the provisions of Part 11 of Title 24 of the California Code of Regulations in other parts of Title 24 of the California Code of Regulations shall not be considered duplication in violation of paragraph (1) of subdivision (a) of Section 18930.

H&SC 18940.6 requires CBSC to conduct research to assist in the development of mandatory green building standards for the installation of recycled water systems for newly constructed commercial and public buildings, in consultation with the State Water Resources Control Board and other interested parties, including, but not limited to, public water systems, recycled water producers, product manufacturers, local building officials, apartment and other rental property owners, California-licensed contractors, and the building industry. The commission shall adopt mandatory building standards for the installation of recycled water systems for newly constructed commercial and public buildings. The commission shall consider the proposed mandatory building standards during the 2016 Intervening Code Adoption Cycle and may amend these mandatory standards as necessary in future code adoption cycles, consistent with the recycled water use criteria specified in Chapter 3 (commencing with Section 60301.100) of Division 4 of Title 22 of the California Code of Regulations.

H&SC 18941.8 requires CBSC to adopt building standards for the construction, installation, and alteration of gray water systems for indoor and outdoor uses in nonresidential occupancies, and to revise and update the standards at any time.

Summary of Existing Regulations

Regarding Items 1-11 of the express terms and initial statement of reasons, the California Green Building Standards Code (Section 5.3 and A5.3, Part 11, Title 24, California Code of Regulations) contains the current standards for showerhead flow rates for nonresidential construction and has standards for voluntary provisions for hybrid urinals.

Regarding Items 12-15 of the express terms and initial statement of reasons, the California Plumbing Code (Chapter 16A, Part 5, Title 24, California Code of Regulations) contains the current standards for the installation of recycled water supply systems for nonresidential construction. The California Green Building

Standards Code (Section 5.305, Part 11, Title 24, California Code of Regulations) contains a reserved section for Water Reuse Systems.

Summary of Effect

Regarding Items 1-11 of the express terms and initial statement of reasons, this proposed action will implement the proposed modifications to the California Green Building Standards Code for buildings within CBSC authority to align with the Appliance Efficiency Regulations adopted by the California Energy Commission in Title 20, California Code of Regulations. This proposed action will also implement proposed amendments to Site Development best management practices, long term bicycle parking, light pollution reduction, commissioning, verification guidelines and commissioning reference standards and other code updates into the CALGreen Code. Once filed with Secretary of State, the standards will be codified and published within the 2016 Intervening Code Supplement by January 1, 2018, and will become effective July 1, 2018.

Regarding Items 12-15 of the express terms and initial statement of reasons, this proposed action will implement the requirements set forth in AB 2282 which requires CBSC to research, develop, and propose for adoption mandatory recycled water building standards during the 2016 Intervening Code Adoption Cycle. Once approved by the commission and filed with Secretary of State, the standards will be codified and published within the 2016 Intervening Code Supplement by January 1, 2018, and will become effective July 1, 2018 within specified jurisdictions that have access to recycled water from a purveyor.

Comparable Federal Statute or Regulations

Regarding Items 1-11 of the express terms and initial statement of reasons, there are federal regulations that establish appliance efficiency standards for certain plumbing fixtures through the WaterSense program developed by the U.S. Environmental Protection Association. Furthermore, California's Title 20 Appliance Efficiency Standards for showerheads exceed the federal standard. These CALGreen amendments seek to align with similar Title 20 Appliance Efficiency Regulations for showerheads adopted by the California Energy Commission.

Regarding Items 12-15 of the express terms and initial statement of reasons, there are no comparable federal statutes or regulations that require the installation of recycled water supply systems in new nonresidential buildings and building site landscape areas.

Policy Statement Overview

CBSC is responsible for the development of green building standards for nonresidential occupancies for which no other state agency has authority or expertise.

Evaluation of Consistency

Regarding Items 1-11 of the express terms and initial statement of reasons, the proposed action is not inconsistent or incompatible with existing state regulations. This proposed action will align specified regulations in Title 24 with those in Title 20 for showerhead flow rates and prevent incompatible/inconsistent regulations. This proposed action will also implement proposed amendments to Site Development best management practices, long term bicycle parking, light pollution reduction, commissioning, verification guidelines and commissioning reference standards and other code updates that are compatible and consistent with existing state regulations.

Regarding Items 12-15 of the express terms and initial statement of reasons, the proposed action is not incompatible or inconsistent with existing regulations. This proposed action will align specified regulations in Title 24 with those proposed by the Department of Housing and Community Development and the Department of Water Resources, and is consistent with the recycled water use criteria specified in Title 22 of the California Code of Regulations.

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

(Gov. Code, § 11346.5, subd. (a)(4).)

Regarding Items 1-11 of the express terms and initial statement of reasons:

The California Energy Commission develops and maintains the Appliance Efficiency Regulations

contained within Sections 1601-1609 of Title 20, California Code of Regulations, which prohibit the sale or offer for sale of specified noncompliant plumbing fixtures, effective January 1, 2016 with a delayed effective date for more restrictive showerhead flow rates on July 1, 2018. One particular type of plumbing fixture regulated by this section of Title 20 is currently allowed for installation by the California Plumbing and Green Building Standards Codes (Parts 5 and 11 of Title 24, California Code of Regulations). Specifically, the Title 20 regulations prohibit the sale of showerheads with a maximum flow rate of greater than 1.8 gallons-per-minute (GPM) at 80 PSI in nonresidential construction. Additionally, the California Energy Code (Part 6, Title 24, California Code of Regulations) states that any appliance regulated by the Appliance Efficiency Regulations, Title 20 California Code of Regulations, Section 1601 et seq., may be installed only if the appliance fully complies with Section 1608(a) of those regulations. CBSC has determined that, pursuant to the adopted Title 20 regulations as well as existing regulations within the California Energy Code, showerheads with a maximum flow rate of greater than 1.8 GPM may not be installed on or after July 1, 2018. Therefore, in order to prevent a conflict between Title 20 and Title 24, CBSC is proposing the permanent adoption of this building standard regulation that will align the installation requirements for showerheads in nonresidential construction to those recently adopted by the CEC in Title 20.

The California Water Resources Control Board has authority to administer the permitting of nonresidential projects that disturb more than one acre of land through their Construction General Permit NPDES permit program. The proposed amendments to the Site development found in Sections 5.106.1 and 5.106.2 are aimed to clarify existing language and resolve potential misinterpretation. Proposed Section 5.106.2 is consistent with the requirements of the Construction General Permit for projects of one acre or more. The Construction General Permit is an NPDES permit that is required as part of the Clean Water Act. The federal Clean Water Act prohibits certain discharges of stormwater containing pollutants except in compliance with an NPDES permit. This proposal is intended to make CALGreen consistent with the objectives of the California Water Action Plan 2016 Update, Water Smart Landscapes recommendations by the California Urban Water Conservation Council, and the Construction General Permit.

Regarding Items 12-15 of the express terms and initial statement of reasons:

AB 2282 authorized CBSC, in coordination with the Department of Housing and Community Development (HCD), to research and develop mandatory recycled water building standards applicable in jurisdictions that have access to recycled water from a purveyor, as specified. As such, CBSC has coordinated with HCD on appropriate amendments that apply to nonresidential occupancies contained in both the California Plumbing and Green Building Standards Codes (Parts 5 and 11, Title 24, California Code of Regulations). It is important to note that major elements of CBSC's proposed regulations in Part 5 are contingent upon those in Part 11, and vice-versa.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

(Gov. Code, § 11346.5, subd. (a)(5).)

CBSC has determined that the proposed regulatory action would not impose a mandate on school districts. However, the proposed regulatory action may impose a mandate on local agencies within jurisdictions that have access to recycled water from a purveyor.

ESTIMATE OF COST OR SAVINGS

(Gov. Code, § 11346.5, subd. (a)(6).)

An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district. Provide a copy of the "Economic and Fiscal Impact Statement" (Form 399)

- A. Cost or Savings to any state agency: **YES**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **YES**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

CBSC estimates that the costs to comply with these regulations will be offset by the benefits of potable water savings that will be realized by local jurisdictions using recycled water from a purveyor.

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

(Gov. Code, § 11346.5, subd. (a)(8).)

CBSC has made an initial determination that the adoption of these regulations will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states. Additionally, CBSC has determined that these regulations do not impose reporting requirements. However, these regulations may have an unknown impact on businesses within the recycled water industry (product manufacturers, plumbing contractors, recycled water purveyors, builders/developers, architects/plan designers, etc.).

DECLARATION OF EVIDENCE

(Gov. Code, § 11346.5, subd. (a)(8).)

CBSC affirms that this rulemaking action complies with the mandates set forth by Health & Safety Code Section 18928, 18929.1 18934.5, and 18940.6. Therefore, the CBSC's initial determination of no significant, statewide adverse economic impact directly affecting business in California and their ability to compete with businesses in other states does not require any additional evidence, documents or other evidence to support this action.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

(Gov. Code, § 11346.5, subd. (a)(11))

CBSC has made an assessment of the proposed code changes and has determined that these changes do not require a report.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

(Gov. Code, § 11346.5, subd. (a)(9).)

CBSC has determined that some businesses may incur costs when complying with this proposed action. These businesses include, but are not limited to, recycled water purveyors, plumbing contractors, product manufacturers, builders/developers, architects/plan designers, and other recycled water stakeholders.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

(Gov. Code, § 11346.5, subd. (a)(10).)

CBSC has assessed whether or not and to what extent this proposal will affect the following:

- ☐ **The creation or elimination of jobs within the State of California.**
Unknown, but the expanded use of dual piping could increase the number of jobs in the recycled water industry (plumbing contractors, product manufacturers, water purveyors, enforcement officials, landscape contractors, etc.)
- ☐ **The creation of new businesses or the elimination of existing businesses within the State of California.**
New businesses in the building, plumbing, manufacturing, landscape irrigation, and recycled water industries may be created by these regulations.
- ☐ **The expansion of businesses currently doing business with the State of California.**
Unknown, but the various plumbing stakeholders (plumbing product manufacturers, plumbing contractors, private recycled water producers, landscape irrigation, etc.) could see an expansion in business resulting from these regulations.
- ☐ **The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.**
These regulations will aid in the reduction of potable water use for outdoor applications, as required by AB 2282 (Chapter 606, Statutes of 2014). This will improve the health and welfare of California residents and elements of the State's environment that have been

adversely affected by the historic drought. Additionally, benefits for amendments to site development provisions include added clarity and removing ambiguities to existing code language that will benefit contractors and businesses. The new proposed language will also make the site development requirements consistent with the Construction General Permit requirements for projects of one acre or more. Project contractors will benefit from clarifications of the construction BMPs. The addition of some code sections will increase awareness to developers, engineers, and architects involved with project design to be further aware of stormwater management measures and integration with site development. The proper integration of LID strategies provides multiple benefits, including greening of urban environments, improved groundwater recharge, reduced heat island effect, and potential urban habitat coupled with improved water quality.

ESTIMATED COST OF COMPLIANCE OF STANDARDS THAT WOULD IMPACT HOUSING

(Gov. Code, § 11346.5, subd. (a)(12).)

There is no impact on housing as CBSC does not have authority for building standards affecting residential occupancies.

CONSIDERATION OF ALTERNATIVES

(Gov. Code, § 11346.5, subd. (a)(13).)

CBSC has determined that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

AVAILABILITY OF RULEMAKING DOCUMENTS

(Gov. Code, §§ 11346.5, subd. (a)(16) and (a)(20).)

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

(Gov. Code, § 11346.5, subd. (a)(19).)

Interested parties may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

(Gov. Code, § 11346.5, subd. (a)(21).)

Government Code Section 11346.5(a)(21) states that CBSC shall provide, upon request, a description of proposed changes included in the proposed action, in the manner provided by Section 11346.6, to accommodate a person with a visual or other disability for which effective communication is required under state or federal law and that providing the description of proposed changes may require extending the period of public comment for the proposed action.

CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

(Gov. Code, § 11346.5, subd. (a)(14).)

General questions regarding procedural and administrative issues should be addressed to:

Michael L. Nearman, Deputy Executive Director

2525 Natomas Park Drive, Suite 130

Sacramento, CA 95833

Telephone No.: (916) 263-0916

Michael.Nearman@dgs.ca.gov

**PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL
QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS**

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Enrique M. Rodriguez, Associate Construction Analyst

2525 Natomas Park Drive, Suite 130

Sacramento, CA 95833

Telephone No: (916) 263-0916

enrique.rodriguez@dgs.ca.gov

Back-up:

Kevin Day, Staff Services Manager I (Specialist)

California Building Standards Commission

2525 Natomas Park Drive, Suite 130

Sacramento, CA 95833

Telephone No: (916) 263-0355

kevin.day@dgs.ca.gov